

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

BOBBIE E. BOYD

PLAINTIFF

VS.

CIVIL ACTION NO : 3:11CV97-MPM-DAS

COMMISSIONER OF SSA

DEFENDANT

REPORT AND RECOMMENDATION

This action was commenced by the *pro se* plaintiff on July 20, 2011. Instead of filing a complaint, the plaintiff filed the notice of the Appeals Council action. The Commissioner has responded with a motion to dismiss stating accurately that what has been filed with the court does not state a claim. The plaintiff's response to the motion to dismiss asserted that she is still disabled. She also said her knee hurt badly when she is standing and that she has depression that comes and goes. She wants the record to "stop saying smoking weed."

Thereafter an order requiring the plaintiff to show cause why this action should not be dismissed was entered. This order allowed the plaintiff to respond to the show cause order by filing a complaint in proper form. The plaintiff was advised by telephone of the entry of this order and that she would be receiving it in the mail. In light of the plaintiff's *pro se* status, court staff provided the plaintiff with samples of complaints for her use in the preparation of a complaint. The show cause order and acknowledgment were mailed to the plaintiff. She has not returned the acknowledgment to the court, and this mail has not been returned to the court. The plaintiff has filed no response to the show cause order nor has she filed a complaint.

The 'complaint' in this action fails to state a claim. The plaintiff has been given an opportunity to cure the deficiencies in her pleadings, but has failed to make any effort to do so. She has failed to respond to the show cause order. The undersigned therefore recommends that

this action be dismissed for failure to state a claim, failure to prosecute and failure to comply with the orders of the court.

The parties are referred to 28 U.S.C. § 636(b)(1) and Local Rule 72(a)(3) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections must be in writing and must be filed within fourteen days of this date. Failure to timely file objections to the proposed findings and recommendations will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions that are accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within fourteen days of this date. Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 8th day of May, 2012.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE